



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 10/16/01
AGENDA ITEM _____
WORK SESSION ITEM WS 2

TO: Mayor and City Council
FROM: City Manager
SUBJECT: Review of Options Regarding A Municipal Electric Utility

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

During the course of its deliberations regarding the Russell City Energy Center ("RCEC"), the City Council requested that staff explore the formation of a mechanism that would enable the City to be engaged in the business of providing electricity to residents and businesses. This report provides a summary and overview of the options available to the City in this regard. An underlying premise is that the operation of the RCEC in Hayward will enable the City to buy electricity wholesale and distribute it on a retail basis, much as is done with our water system.

Formation of an Irrigation District

One option is for the City to form an irrigation district ("District") to engage in the purchase and resale of electricity. The District could consist of City-owned land and the City could offer other landowners, *e.g.* owners of industrial parks, the opportunity to participate in the District. Lands included in the District need not be contiguous. In order to form a District, the City and other participants must be willing to engage in activities that develop, conserve and preserve water for the beneficial use of the District's inhabitants; this is the main purpose of a District. Water for agriculture is no longer a required purpose for formation of a District. The right to distribute and sell power is ancillary to the main purpose of the District. While this option would give the City broad power to engage in the business of buying and selling electricity, as discussed below, the process of forming the District is cumbersome and may not grant the City the autonomy or sufficient revenue to justify its formation.

The formation of a District takes approximately one year. In order to form a District, a petition for formation must be prepared and circulated; the petition must contain a description of the land proposed to be included, a statement as to the source or sources of water supply, and the signatures of the qualified petitioners. After the petition has been prepared and circulated, it must be published. After publication of the petition, a preliminary hearing regarding formation of the District is held before the board of supervisors. If the board determines that the petition is sufficient and adopts a preliminary formation resolution, the resolution is forwarded to the State Department of Public Works ("DPW"). The State DPW then makes a feasibility investigation of the proposed irrigation project and returns a written recommendation to the board. The board has some limited powers to override an unfavorable DPW recommendation. If the board proceeds with the petition, it will hold a final hearing, adopt a final resolution and call for an election of qualified voters residing within the proposed District.

Disadvantages of this option include the time-consuming formation process and that the District may not provide the City with its desired level of autonomy or revenue. A District is not a division of the City even if all of the land that comprises the District is City owned land. Rather, the District is a separate and independent legal entity. The District is limited by statute as to the types of accounts it can establish and the allocation of monies to those accounts. Thus, the District's board cannot simply vote to remit District revenues to the City.

Because this option is cumbersome and would not result in the level of control and revenue the City may desire, staff suggests that this option not be pursued.

Annexation to an Existing Irrigation District

The City may request annexation of certain property to an existing District. Such a request would be made by petition of the titleholder(s) of the property to be annexed to the board of directors of the existing District. Annexed property need not be contiguous to the existing District. The District could then buy power and sell it to inhabitants of its District, the City property included in the District, and to City sites outside of the District as well. A District may sell, dispose of, and distribute electric power for use outside of its boundaries.

A disadvantage of this option is that the City must cede control to the existing District's board. The City's likely representation on the board would be only in that proportion that its property in the District has to the District as a whole. While the City would be able to extract a fee from the existing District in exchange for annexation, ensuing District revenues would not flow directly to the City. In contrast to forming a District, this option has its advantages: it would be relatively quick and painless to complete and does not require an election by any of the City's inhabitants.

Although this option is not as cumbersome as forming a District, in staff's judgment the disadvantages argue for dropping this option from further consideration.

Formation of a Municipal Utility District ("MUD")

Another option available to the City is to form a municipal utility district ("MUD") for the purchase of power and the resale to end users. The City, together with unincorporated territory, or with another public agency, may organize and incorporate as a MUD. Public agencies include cities, county water districts, county sanitation districts and sanitary districts. Public agencies and unincorporated territory included within a MUD may be in the same or separate counties and need not be contiguous. However, no public agency can be divided in the formation of a MUD.

Staff believes that this alternative has basic disadvantages that make it unsuitable for the City's purposes. The City would have to include some unincorporated territory or join with another public agency to form a MUD. Any MUD created would have to include the entire City of Hayward. Finally, a MUD has the same disadvantages to the City as an irrigation district: it is a separate legal entity through which the City would not directly receive any revenue. Therefore, staff recommends that the City Council not consider this option any further.

Formation of a Utility Owned by the City

This option involves the City operating an electric utility to purchase power and to resell it to end users. Of the alternatives staff has researched and analyzed, this is probably the most attractive because it confers broad powers on the City and it is more flexible than other options. However, as discussed below, this option is not without its disadvantages.

The City may acquire or construct facilities to operate an electric utility under California law. The City can then provide power to some or all of its inhabitants. The City can also sell or otherwise distribute excess power outside of the City limits. The City may do whatever is necessary in terms of easements, licenses, etc., to operate the electric utility. The City would have rights of way over roads, streets, etc., for construction and operation of its power lines and would have similar rights of way over state public lands. The City's Charter authorizes the City to form a utility under its general delegation of powers, and could create a department for operation of an electric utility. Under this option, the City could set its own rates for electric power; the rates do not need to be approved by the California Public Utilities Commission ("CPUC"). However, the CPUC would have jurisdiction over the construction and maintenance of the City's electric system, particularly with respect to safety.

In sum, this option has the advantage of providing the City with broad powers to acquire, own and operate a utility to provide electric service and to provide that service to all or any portion of the City, and to sell excess electricity outside of its corporate limits with relatively few restrictions. However, this option also has some disadvantages. For example, if the City wants to use certificates of participation to finance the acquisition of electric facilities, it must hold an election to authorize the debt. The debt must be approved by a majority of the voters voting in the election. Or, if the City ultimately desires to sell its public utility, it must submit

the sale proposal to the City's qualified voters in a special election called for that purpose. The votes of two-thirds of all voters voting at the election are necessary to authorize the sale of a City-owned public utility. A City-owned public utility would also be subject to several other restrictions. For example, the City could not expend any funds for advertising the power it furnishes when the advertising would encourage increased consumption of the service. However, the City may expend funds for advertising if the advertising encourages more efficient use of power or the conservation of energy or natural resources. The City would also be restricted in the means by which it could deal with tenants in both individually metered and master metered multi-unit residential structures, in the imposition of deposits, and in the termination of residential service for nonpayment.

Of all the options set forth in this report, staff believes this option would be the most advantageous for the City. However, staff cautions that formation of a City-owned electric utility is not without some risk, and these should be evaluated before a decision is rendered.

Therefore, if Council supports examining this option in detail, staff suggests that appropriate consultant services be retained to analyze pertinent technical, financial and operational issues. If this analysis is to be pursued, staff would seek formal council action to issue a Request for Proposal for such services.


Jesús Armas, City Manager